

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

THOMAS J. WHITFIELD,

Defendant-Appellee.

---

UNPUBLISHED

September 25, 1998

No. 207229

Recorder's Court

LC No. 97-005488

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion to suppress and motion to dismiss. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with possession of less than 25 grams of heroin, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), based on evidence obtained in the execution of a search warrant. Defendant moved to suppress the evidence, asserting that the affidavit supporting the search warrant failed to establish probable cause. The affidavit stated that the affiant had attempted to make a drug purchase from defendant, and saw a bundle of blue coin envelopes removed from defendant's pocket. Defendant refused to make the sale when affiant could not convince defendant that they had mutual contacts. The affidavit stated that affiant had participated in over 100 narcotics raids, and that he had seen heroin in coin envelopes on numerous occasions. The trial court found that plaintiff had failed to establish probable cause, and granted defendant's motion to suppress and motion to dismiss.

A search warrant should be upheld if a substantial basis exists to conclude that there is a fair probability that the items sought will be found in the stated place. *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992); *People v Head*, 211 Mich 205, 208; 535 NW2d 563 (1995). The reviewing court should ask whether a reasonably cautious person could have concluded that there was a substantial basis for the finding of probable cause. *Head, supra* at 209. The underlying affidavit must be read in a common sense and realistic manner, and the trial court's findings of fact are reviewed for clear error. *Id.*

The trial court did not err in granting the motion to suppress. Unlike *Head, supra*, there was no evidence of other drug transactions here. The officer did not see actual drugs; he saw coin envelopes which are often used to hold drugs. The prosecutor conceded that these envelopes could also have a legitimate use. A reasonable person could conclude that the officer's suspicion was insufficient to establish probable cause. *Head, supra*.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh